IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7787 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RITABEN D/O DEVIDBHAI JETHABHAI MAKWANA

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 03/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this Writ petition under Art.226 of the Constitution of India, challenged the legality and validity of the order of detention dt. 2/4/2000, Annexure : A passed by Respondent No.1 in exercise of powers conferred upon him

under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that the petitioner detenu is an "immoral traffic offender" within the meaning of Sec.2(g) of the Act and that her activities are prejudicial to the maintenance of public order. Before passing the order of detention, for arriving at his subjective satisfaction, the detaining authority has placed reliance on one case registered as CR.No. II 75/2000 punishable under Secs. 3,4 and 6 and 7 of the Immoral Traffic (Prevention) Act, 1956 and that case is pending with Investigating Officer for investigation. The detaining authority also placed reliance on statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. That two statements were verified by the detaining authority on 31/3/2000 and he passed an order of detention against detenu on 2/4/2000 which is challenged in this Writ Petition.

3. Though Rule has been served upon each respondent, the respondents have not filed affidavit-in-reply in reply to the Writ Petition controverting the grounds mentioned in Memo thereof.

4. Ms. Kachhuvah, the learned advocate for the petitioner detenu has argued that on reading last para on Page 4 of grounds of detention, the detaining authority has considered the provision with regard to Sec.57(C) of the Bombay Police Act, and therefore, this is a case of total non-application of mind of the detaining authority. Ms. Kachhuvah has cited an authority in case of JAYANTI NENUMEL RAMNANI vs. COMMISSIONER OF POLICE, RAJKOT, reported in 2000(2) G.L.H. 166, wherein it has been held that the question does not arise for considering less drastic remedy, when it is not available to the detaining authority, since only one offence was registered against the detenu, and therefore, this fact itself shows non-application of mind on the part of the detaining authority. The detaining authority ought to have considered possibility of resorting to less drastic remedy, if it was legally available. Thus, this present case squarely falls within the four corners of aforesaid case cited by her. This fact is not considered by the detaining authority which itself reflects non-application of mind, and therefore, the order challenged in this Writ Petition is bad in law and it requires to be quashed and set aside.

5. In view of what is stated hereinabove, this Writ Petition is allowed. The order of detention dt. 2/4/2000 Annexure : A passed by Respondent No. 1 is quashed and set aside. The petitioner detenu is ordered to be released forth with, if she is not required to be detained further for any criminal case or proceeding. Rule is made absolute accordingly. Direct Service is permitted.

Date: 3/10/2000. (H.H.MEHTA,J.)
ccshah